

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO**

ARMANDO MARTINEZ,

Petitioner,

v.

No. 2:21-cv-0848 MV/DLM

RICHARD MARTINEZ and
ATTORNEY GENERAL of
the STATE OF NEW MEXICO,

Respondents.

**ORDER ADOPTING PROPOSED FINDINGS
AND RECOMMENDED DISPOSITION**

On June 13, 2023, United States Magistrate Judge Damian L. Martínez filed a Proposed Findings and Recommended Disposition (PFRD) recommending that Petitioner be granted 30 days to dismiss his unexhausted claims from his petition.¹ (Doc. 19.) The PFRD notified the parties of their ability to file objections no later than 14 days after the filing of the PFRD—June 27, 2023—and that failure to do so waived appellate review. (*Id.* at 2.) As no party filed objections within the time allowed, the Court concludes that appellate review has been waived.

Indeed, Petitioner filed a notice in which he voluntarily dismisses the unexhausted grounds identified in the PFRD, thereby eliminating the need to grant him time to do so. (Doc. 20.) Accordingly, the Court will adopt in part the PFRD, excluding only the portion that recommends Petitioner be granted 30 days to dismiss his unexhausted claims.


IT IS THEREFORE ORDERED that the Magistrate Judge’s PFRD is **ADOPTED in part.**

¹ Judge Martínez recommended finding that Grounds 5 and 6 (relating to Petitioner’s representation at a suppression hearing) and Ground 7 (Petitioner’s claim of actual innocence) are unexhausted. (Doc. 19 at 1.)

IT IS FURTHER ORDERED that Grounds 5 and 6 (as they relate to Petitioner's representation at the suppression hearing) and Ground 7 (Petitioner's claim of actual innocence) are **DISMISSED**.

IT IS FURTHER ORDERED that Petitioner must file an amended § 2254 petition including only his exhausted claims by **August 25, 2023**, and Respondents must file an answer by **September 8, 2023**. Petitioner may file a reply brief no later than **September 22, 2023**.

IT IS SO ORDERED.



MARTHA YAZQUEZ
SENIOR UNITED STATES DISTRICT JUDGE